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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,136	05/06/2004	Antonio Cardoso	CRUZ/002	7257
26291	7590	06/28/2005	EXAMINER	
MOSER, PATTERSON & SHERIDAN L.L.P. 595 SHREWSBURY AVE, STE 100 FIRST FLOOR SHREWSBURY, NJ 07702			CHUKWURAH, NATHANIEL C	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/840,136

Applicant(s)

CARDOSO, ANTONIO

Examiner

Nathaniel C. Chukwurah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 16-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 May 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/6/2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Election/Restriction

Applicant's election without traverse of the invention of group I, claims 1-15 in the reply filed on 6/3/2005 is acknowledged.

Claims 16-22 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/3/2005.

Drawings

The drawings are objected to under 37 CFR 1.83(a) because they fail to show # 284 as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR

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1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “354” has been used to designate both shaft and mounting plate. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-6, 8 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, lines 2-3: “ the lead alignment assembly” lacks proper antecedent basis.

In claim 5, the phrase “relative to the boom relative to an axis” in line 3 is confusing.

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Claim 8 lacks the structural/functional relationship between the cage and claimed attachment in order to form a part of the claimed attachment.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8, 10-13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by McDowell et al. (US 5,375,664).

With regard to claim 1, McDowell et al. discloses an attachment comprising: a lead (30), a hammer (38) slidably coupled to the lead, a lead mounting assembly (20, 26, 36) coupled to the lead, a hydraulic actuator (36) coupled to the lead (30) and the lead mounting assembly (20, 26, 36); the actuator is adapted to control the orientation of the lead relative to the lead mounting assembly.

With regard to claim 2, McDowell et al. shows a winch (46) coupled to the lead mounting assembly.

With regard to claim 3, McDowell et al. shows a first mounting hole (see hole at 31) substantially perpendicular to the lead (30).

With regard to claim 4, McDowell et al. shows the center line of the hole (see hole at 31) perpendicular to an axis of rotation of the lead (30) relative to the lead mounting assembly.

With regard to claim 5, McDowell et al. shows a mounting bracket (26) having a first hole (28) for coupling to a boom (20) and a second mounting hole (see hole adjacent 28) for

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coupling hydraulic actuator (34) adapted to rotate the mounting bracket (26) relative to the boom and an axis of rotation defined by the first hole.

With regard to claim 6, McDowell et al. shows a mounting plate (portion extending midway of 26) mounting bracket (26), and a shaft (see shaft coupling 31 and 26), the shaft is coaxial with an axis of rotation of the lead relative to the mounting plate.

With regard to claim 8, McDowell et al. shows a cage (hammer housing) shielding the hammer and adapted to travel with the hammer.

With regard to claim 10, McDowell et al. discloses a lead (30), a hammer (38) slidably coupled to the lead, a lead mounting assembly (20, 26, 36) coupling the lead to the boom (20), a boom mounting hole (see hole adjacent 28) defining a first axis of rotation substantially perpendicular to the lead (30); the lead (30) also rotates at (31).

With regard to claim 11, McDowell et al. shows a hydraulic actuator (36) coupled to the lead (30) and the lead mounting assembly (20, 26, 36), the actuator causes the lead to rotate relative the mounting assembly. Further, the actuator is capable of being coupled the existing hydraulic fluid control port of the excavator.

With regard to claim 12, McDowell et al. shows a winch coupled to boom (20).

With regard to claim 13, McDowell et al. shows a mounting bracket (26) having a boom mounting hole (see hole at 28); a mounting plate (portion extending midway of 26) coupled to the mounting bracket (26), and a shaft (see shaft coupling 31 and 26), the shaft is coaxial with an axis of rotation of the lead relative to the mounting plate.

With regard to claim 15, McDowell et al. shows a cage (hammer housing) shielding the hammer and adapted to travel with the hammer.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDowell et al.

The attachment of McDowell et al. meets all of applicant claimed subject matter but lacks the specific teaching of the cage comprising an integral ladder. However such feature is an engineering design choice which would have been obvious to one of ordinary skill in the art as a matter of engineering design choice to include a ladder to the cage since applicant has not disclosed that having an integral ladder solves any stated problem and it appears that the hammer would perform equally well without the integral ladder.

Claims 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDowell et al. in view of Doty (US 4,333,541).

McDowell et al. lacks a plurality of holes formed in the lead and adapted to accept a pin for limiting the travel of the hammer. However, Doty teaches holes (29) for engaging pins (33) in order to limit adjustability to the overall positioning of the channel relative to the side plate.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the attachment of McDowell et al. with holes as taught by Doty in order to give limiting adjustability to the overall positioning of the channel relative to the side plate (col. 3, lines 2-3).

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Conclusion

Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

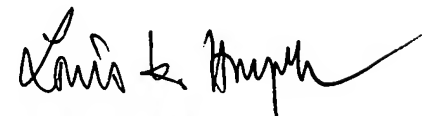
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathaniel C. Chukwurah whose telephone number is (571) 272-4457. The examiner can normally be reached on M-F 6:00AM-2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NC

June 15, 2005.



**LOUIS K. HUYNH
PRIMARY EXAMINER**